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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-99-177-51073

Office: Nebraska Service Center

Date:

MAR 7 2001

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

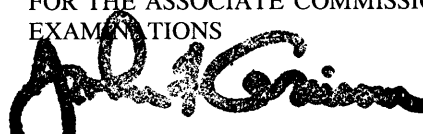
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a women's gymnastics facility. The beneficiary is a gymnast. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), in order to employ her in the United States as a gymnastics coach for a period of three years.

The director denied the petition finding that the petitioner had not established that the beneficiary qualifies for classification as a gymnast of extraordinary ability and found that the proffered position of coach does not constitute continuing work in the area of extraordinary ability necessary for O-1 classification.

On appeal, counsel for the petitioner argued that the decision showed a mischaracterization of the facts and a misapplication of the law. A written brief was submitted.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issues raised by the director in this proceeding are whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability and whether the position of coach constitutes continuing work in the area of extraordinary ability.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim

and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's

occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary is a native and citizen of Romania. A letter was submitted from the United States Gymnastics Federation (USGF) stating that the beneficiary was a member of the Romanian women's gymnastics team that won a gold medal in the 1994 Team World Championships and that won a bronze medal in the 1996 Olympics. A certificate also was submitted showing that the beneficiary was awarded the title of "1st Class Master of Sport" by the Romanian Ministry of Youth and Sport.

The first issue is whether the record establishes that the beneficiary qualifies as an alien of extraordinary ability in athletics. Participating on a national team in the Olympics is undeniably a high level of achievement in athletics, but is not sufficient to establish that an individual athlete has "extraordinary ability" as contemplated in the Act. The letter from the USGF stated that the beneficiary is "well known as one of the newer top level gymnasts from Romania." There is no documentation to demonstrate that the beneficiary has won individual medals or awards or is otherwise at the "very top" of her field of endeavor.

In addition, the beneficiary could not be said to meet at least three of the criteria listed in the above regulation. For example, while the beneficiary was awarded a national honorific title, there is no evidence that she has won any international awards or medals as an individual athlete. The record contains no documentation of the beneficiary's international ranking in gymnastics. The proffered wage of \$9.00 per hour also does not satisfy the criteria of ability to command a high salary. After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a gymnast of extraordinary ability within the meaning of section 101(a)(15)(O) of the Act.

The second issue is whether the position of gymnastics coach meets the employment criteria for O-1 classification. The proffered position is that of a gymnastics coach at a facility that trains women gymnasts with a goal that those trained might participate in the Olympics.

The O-1 classification is available to qualified aliens who seek to come to the United States to perform services relating to a specific event or events. 8 C.F.R. 214.2(o)(1)(i). In this case, it is concluded that coaching, or teaching, at a gymnastics facility is not related to a specific athletic event or events and does not constitute continuing in the work of athletic performance at the extraordinary level. There is no evidence that coaching gymnastics requires being, or having been, a gymnast or that there are any recognized standards evaluating or ranking coaching. Even

if coaching were considered related to a specific athletic event, there is no evidence that the beneficiary has achieved any sustained acclaim in the field of coaching.

For these reasons, it is concluded that the petitioner has failed to overcome the grounds for denial stated in the decision of the director. The denial of this petition is without prejudice to the filing of a petition on behalf of the beneficiary for any other benefit for which she may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.